

LAW OFFICES

**BALLARD SPAHR ANDREWS & INGERSOLL, LLP**

1735 MARKET STREET, 51ST FLOOR  
PHILADELPHIA, PENNSYLVANIA 19103-7599  
215-665-8500  
FAX 215-864-8999  
WWW.BALLARDSPAHR.COM

BALTIMORE, MD  
DENVER, CO  
SALT LAKE CITY, UT  
VOORHEES, NJ  
WASHINGTON, DC  
WILMINGTON, DE

JOSHUA D. SHAPIRO  
DIRECT DIAL 215-864-8340  
PERSONAL FAX 215-864-9190  
SHAPIROJ@BALLARDSPAHR.COM

December 14, 2004

**By Federal Express**

Jeff S. Jordan, Esquire  
Supervisory Attorney  
Office of General Counsel  
Federal Elections Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: **MUR 5550**

Dear Mr. Jordan:

I am writing as counsel to Lehigh University (hereinafter referred to as the "University"). I am in receipt of your November 23, 2004 letter stating that the FEC received an amendment to a complaint filed by David T. Hardy that suggests the University may have acted in violation of the Federal Election Campaign Act of 1971 (the "Act"). Lehigh University has in no way violated any aspect of the Act and as such, no action should be taken against the University.

As a private institution of higher education, the University has a long history of fulfilling its educational mission by offering students, faculty, and campus community members the opportunity to hear from and discuss important national and international issues with some of the world's most prominent newsmakers from diverse political backgrounds. By way of example, the University has hosted speakers including Hans Blix – former Head of the United Nations Iraq Weapons Inspection Team; Ernesto Zedillo – former President of Mexico; Gary Aldrich – a former FBI agent who played a key role in the impeachment of President Clinton; Jeff Gannon – the White House Correspondent from the Talon News Service, and Christina Hoff-Sommers – a fellow from the American Enterprise Institute. These speakers and others have been controversial figures in their own right and often have aroused debate and political passions in all corners of the political arena. The University has never used or intended to use these speaking engagements as a mechanism to espouse a particular political view of the University but rather sought to fulfill its mission of promoting awareness, critical thinking and discussion on important issues within the campus community.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2004 DEC 15 A 10:43

Michael Moore was formally invited to the University by the Visiting Lectures Committee (VLC), comprised of students, faculty and staff who are selected by their campus constituencies to participate in the selection and booking of speakers. The VLC maintains a budget which is used to cover expenses related to the speaking engagements.

In Mr. Hardy's amended complaint which accompanied your November 23, 2004 letter, Mr. Hardy made one minor reference to Lehigh University, speculating that the University "may have paid" \$60,000 for Mr. Moore's appearance. In fact, Mr. Moore was paid \$25,000 for his appearance, funded exclusively from ticket sales. Further, it is unclear as to what the real allegations Mr. Hardy is making against the University. What is clear is that Mr. Hardy is attempting to drag the University into a personal squabble with Mr. Moore. Nonetheless, the University did not violate any FEC regulations.

Mr. Hardy suggests that on October 29th, the University violated 2 U.S.C. § 441(b) (2002) by inviting and incurring expenditures for filmmaker/author Michael Moore to speak to the campus community at Stabler Arena. Mr. Hardy's allegations cite provisions defining expenditure as any payment "made by any person for the purpose of influencing any election for Federal Office," and indicating that corporations (including not-for-profit corporations) are prohibited from making such expenditures. Mr. Hardy has submitted no proof in support of his contentions nor has he offered the context within and the process by which the University booked Mr. Moore's speaking engagement.

Although it requires a generous reading of Mr. Hardy's complaint, he apparently seeks to allege that the University paid Mr. Moore to speak in order to raise support for the John Kerry for President campaign. Mr. Moore did not come to the University as a representative of that campaign (or any campaign) or the Democratic National Committee but rather through a private contractual agreement. The VLC, in cooperation with University Productions ("UP"), a student group organizing entertainment events on campus, asked Mr. Moore to guest lecture in his capacity as a filmmaker and author, not as a representative of the Kerry for President campaign or Democratic party. The VLC signed a contract for Moore's appearance with the Greater Talent Network ("GTN"), an independent, for-profit talent booking agency in New York with which the VLC has contracted for speakers on numerous occasions. The contract called for \$25,000 in compensation -- not \$60,000 as Mr. Hardy speculated -- all of which was to be paid for from ticket sales only. The contract did not call for any university funds to remunerate Mr. Moore. VLC used \$8,000 in University funds to cover the cost of services offered by Stabler Arena, University Police, and Blue Chip Productions (a lighting/sound contractor). At no point were any monies from the University directed towards the Democratic party, the Kerry for President campaign, or any other campaign.

In furtherance of its mission of encouraging awareness and balanced debate within the campus community, the University also invited and made its facilities available for a guest lecture by David T. Hardy, the originator of the complaint and co-author of the book *Michael Moore is a Big Fat Stupid White Man*, to offer a contrasting set of opinions and views to Mr. Moore. Mr. Hardy's appearance occurred on October 28th, the evening before Mr. Moore's

engagement. Additionally, the University provided a table at the Michael Moore event for the College Republicans to dispense information and educational materials.

In FEC Advisory Opinion 1992-6, the FEC considered whether Vanderbilt University would incur expenditures in violation of the Federal Election Campaign Act of 1971, by inviting then-Presidential candidate David Duke to speak to the campus on the history of affirmative action in America, during his campaign. In determining that an honorarium granted to Duke for delivering his speech was not an "expenditure," the FEC established a three-part test to determine whether a fee for speaking constitutes an expenditure. In it, the FEC looks to whether the honorarium would be paid directly to the speaker and not to the campaign; whether the university would not solicit or direct or control contributions to the campaign from those attending the event, either at the event or in invitations to the same; and, whether any contributions made by the university to the candidate's campaign fund would not be in consideration for the candidate's speaking engagement. Based on this test, the University did not make an expenditure and was therefore not required to file a report with the FEC.

First, the University booked Mr. Moore through GTN, not the Democratic National Committee (DNC), as an independent filmmaker/author – not an agent of the Democratic party or a campaign. However, even if Mr. Moore is considered in his independent capacity to be serving as an agent of a campaign and/or DNC because of the views he expressed (as Mr. Hardy would like you to believe), the VLC's \$8,000 incurred expense does not qualify as "expenditures" according to the guidance offered in Advisory Opinion 1992-6. The money paid directly by the University went only to Stabler Arena, University Police and Blue Chip Productions.

Second, Mr. Moore only received revenue from individual ticket sales. The University took no action whatsoever in soliciting, directing, or controlling any donations in support of the Kerry for President campaign, the Democratic party, Mr. Moore himself or any causes that he may support.

Third, neither the University, nor any group affiliated with it, made any contribution to the Kerry campaign or Democratic party in exchange for Mr. Moore's appearance.

Should the FEC deem Mr. Moore's independent appearance to be for the purpose of influencing a federal election on behalf of the Kerry for President campaign, the University has still not run afoul of the election laws. 2 U.S.C. § 114.4(c)(7) maintains that "an incorporated nonprofit educational institution exempt from federal taxation...may sponsor appearances by candidates, candidates' representatives or representatives of political parties at which such individuals address or meet the institution's academic community or the general public on the educational institution's premises at no charge or at less than the usual and normal charge if: 1) the educational institution makes reasonable efforts to ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and makes reasonable efforts to ensure that the appearances are not conducted as campaign rallies or events; 2) the educational institution does not, in conjunction with the

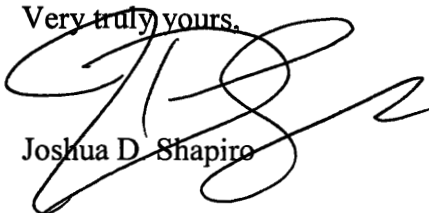
Jeff S. Jordan, Esquire  
December 14, 2004  
Page 4

appearance, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party, and does not favor any one candidate or political party over any other in allowing such appearances.”

Based on the aforementioned language, the University is not required to meet FEC reporting requirements. The expenditures are not reportable because the University has itself not paid Mr. Moore for his appearance, nor was the \$8,000 paid to Stabler Arena and other supporting staff made with the purpose of influencing a federal election. Mr. Hardy's citation to FEC v. Furgatch, 807 F.2d 857 (9th Cir. 1987) in support of this argument is inapplicable here as Furgatch dealt with a private individual incurring expenditures for an advertisement expressly advocating for a particular U.S. Presidential candidate. The facts there were entirely dissimilar from the present case and as such the case is inapplicable.

Should you require any further information or documentation please do not hesitate to contact me. Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read 'JDS', with a long horizontal flourish extending to the right.

Joshua D. Shapiro

JDS/jm

26044143022